IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 705 of 1991

with

CRIMINAL APPEAL No 365 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

KHARAK PANCHA RAVJI & ANOTHER

Appearance:

1. Criminal Appeal No. 705 of 1991
   MR KT DAVE, APP, for the appellant
   MR DA BAMBHANIA for Respondent No. 1
   MS DR KACHHAVAH for Respondent No. 2
2. Criminal Appeal No. 365 of 1992
   MR KT DAVE, APP, for appellant
   MS DR KACHHAVAH for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/06/2001

ORAL JUDGEMENT

1. Both these appeals are preferred by the State of Gujarat against the judgment and order rendered by learned Chief Judicial Magistrate, Bhavnagar, in Criminal Case No.4794 of 1989 on April 22, 1991.

2. The case against the respondents herein was that respondent No.1 was serving as Manager with Balwantrai Mehta Oil Processing Co-operative Society Limited, which is engaged in oil milling. As per the prosecution case, Deputy Manager of the said co-operative society, Mr. Akbarali Mohmadali Charania was informed by watchman Pravinsinh that 198 bags containing peanuts were stolen from the godown at the instance of respondent No.1 and with the help of respondent No.2. The value of 198 box of peanuts was assessed at Rs.38,240/-. On basis of that information, Akbarali Mohmadali Charania lodged an F.I.R. with the police. An offence came to be registered. Case came to be investigated and, ultimately, charge sheet came to be filed before the learned Judicial Magistrate, First Class, Bhavnagar. Criminal Case was registered at No.4794 of 1989. Charges were levelled against present respondents for offences punishable under Sections 379, 380, 381 and 408 read with Section 34 of Indian Penal Code. The accused persons pleaded not guilty to the charge and expressed their desire to face the trial. Considering the evidence led by the prosecution, the learned Chief Judicial Magistrate, Bhavnagar, came to a conclusion that the prosecution could not prove the case against the accused persons beyond reasonable doubt and, therefore, acquitted the accused persons of the charges levelled against them. The learned Magistrate also ordered that the muddamal currency notes be handed over to accused No.2 from whom they were recovered.

3. Aggrieved by acquittal of accused Nos. 1 and by the order of handing over of muddamal to accused No.2, the State of Gujarat has preferred these two appeals.

4. Heard learned Additional Public Prosecutor Mr. Dave for the appellant and Ms. Kachhavah for respondent No.2. None appears for respondent No.1.

5. Learned Additional Public Prosecutor Mr. Dave has taken this Court through record and proceedings and evidence on record in particular. He has also taken this Court through the judgment impugned herein. Mr. Dave submitted that here is a case where a person who was holding the custody of the property has misused his position and has misappropriated 198 bags of peanuts worth Rs.38,240/-. The learned Chief Judicial Magistrate ought to have considered that when such acts are

committed, it is difficult to have direct evidence. The evidence on record particularly of the two labourers who have moved the muddamal out of the godown ought to have been believed by the learned Chief Judicial Magistrate. That having not been done, the learned Chief Judicial Magistrate has committed an error in appreciating the evidence and, ultimately, in acquitting the accused respondents herein. Mr. Dave also submitted that the learned Chief Judicial Magistrate ought not to have handed over the muddamal currency notes to accused No.2 for the reason that the case is not believed by giving benefit of doubt and, therefore, the amount ought not to have been handed over to accused No.2. He urged that this appeal may be allowed and the judgment and order impugned herein may be set aside and the accused respondents be convicted.

6. Ms. Kachhavah has opposed this appeal.

7. Having been taken through the record and proceedings and the judgment impugned herein, what emerges is that the first informant has no personal knowledge about the incident. The person on whose information first information was lodged by the first informant, namely, Pravinsinh, has not supported the prosecution case. He has turned hostile to the prosecution and, therefore, his evidence does not lead the prosecution case any further.

8. Now, therefore, the case of the prosecution hangs on depositions of two witnesses, who claim to have worked as labourers for shifting the bags from the godown. They are P.W. 6 and 7. If their depositions are seen, they do not, in any manner, implicate any accused. All that they say is that they had shifted some bags containing peanuts. P.W.6-Anvarkhan is examined at Ex.69 and he says that he was summoned at about 10-10.30 P.M. by Mana alias Ramnikbhai for shifting of the bags. He says that he had shifted about 75 bags from godown to the milling place. He says that along with him, Ahmed Ibrahim and Hussain Natha were there.

9. Hussain Natha is P.W.7, who is examined at Ex.70. In his deposition he says that about 100 bags were shifted by him. He says that these bags were shifted to another godown. Hussain Natha then says that he along with two other persons had again gone to the godown 2-3 days thereafter and had shifted 150 bags containing peanuts and were placed at the place where earlier they had stocked 100 bags.

10. The outcome of this evidence is that these witness do not state as to on which date they shifted the bags. Both the witnesses claim to have shifted gunny bags to two different places. One says that they were taken to the milling place and the other says that they were taken to a godown. As regards number of bags, again there is discrepancy. Even if their version is accepted at its face value, the figure does not go anywhere near 198 bags, theft/misappropriation of which the accused are charged with. Barring these two depositions, there is absolutely nothing on record to indicate involvement of any of the respondents in the alleged offence.

10.1 It also requires to be noted that there is nothing to indicate what was the volume of stock around the time when the offence is alleged to have been committed. Only some note books are shown which are not authenticated by any responsible officer's signature. It would not be unreasonable to expect a co-operative society to be having a regular stock register for the godown. No such stock register is brought on record. Absence of such authenticated stock register would lead to legitimate inference of doubt about the prosecution case.

11. In the opinion of this Court, the learned Chief Judicial Magistrate does not appear to have committed any error in not believing the prosecution case. The case of the prosecution cannot be considered beyond shadow of doubt and the accused persons could not have been convicted. This court is in agreement with the reasonings adopted and conclusions arrived at by the Trial Court while acquitting the accused-respondents.

12. The muddamal has rightly been ordered to be handed over to the person from whom it was recovered. Simple recovery of cash cannot in any manner implicate a person in absence of any other evidence and, if there is nothing to implicate him, there is no reason why the amount cannot be returned to the person from whom it is recovered.

13. There appears no reason for this Court to interfere with the judgment and order recording acquittal of the accused persons which is impugned herein. The appeals, therefore, must fail and the same are dismissed. Judgment and order of the learned Chief Judicial Magistrate, Bhavnagar, in Criminal Case No.4794 of 1989, dated April 22, 1991 is confirmed.

[A.L. DAVE, J.]

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